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QUARTERLY SYNOPSIS OF FLORIDA CASES

ADMINISTRATIVE LAW. *Board of Law Examiners: Denial of application.* Plaintiff's application to take the bar examination was rejected by the Board of Law Examiners. At the Board's hearing, no actual evidence of the moral unfitness of the applicant was introduced, and the board relied entirely on undisclosed information in reaching its decision to reject the applicant. The applicant was not accorded due process, and the denial of his application was error.¹

Revocation of Hotel License: Review. The statutory provisions for judicial review of an order revoking a hotel license² are adequate to protect a hotel against a denial of due process. Therefore, a suit to enjoin a hearing on a rule to show cause why the plaintiff hotel's license should not be revoked, should have been dismissed where the injunction was sought upon an alleged denial of due process.³

Unemployment Compensation: Employment availability. The claimant was not "available for work"⁴ and therefore not entitled to unemployment compensation benefits where it was clearly shown that she was content to work only a few months during the winter and remain idle during the summer. The claimant had registered for a particular line of work which she knew was unavailable during the summer and made no attempt to find other suitable employment.⁵

APPELLATE PROCEDURE. *Certiorari: Final judgment.* The order of a Circuit Court reversing a conviction by a Municipal Court did not finally determine the cause by giving such judgment or order as the trial court should have given, and therefore was not of such finality as to support granting of a petition for a writ of certiorari.⁶

County Judge's Court: Replacement of judge. Where a Circuit Judge replaces an absent or disqualified County Judge in a proceeding to have a person adjudged an incompetent, a judgment rendered is nevertheless a judgment of a County Judge's Court and the appeal therefrom⁷ should be taken to the Circuit Court.⁸

1. *Coleman v. Watts*, 81 So.2d 650 (Fla. 1955).

2. FLA. STAT. § 511.05 (1953).

3. *Florida Hotel & Rest. Comm'n v. Marseilles Hotel Co.*, 84 So.2d 567 (Fla. 1956).

4. FLA. STAT. § 443.05 (3) (1953).

5. *Florida Industrial Comm'n v. Ciarlante*, 84 So.2d 1 (1955).

6. *Miami v. Brown*, 80 So.2d 610 (Fla. 1955).

7. FLA. STAT. § 61.01 (1953).

8. *In re Freeman's Petition*, 84 So.2d 544 (Fla. 1955).

Madamus. The relator had recovered a judgment on certain drainage district bonds and petitioned for a writ of mandamus to require the district's supervisors to levy assessments in order that the judgment could be satisfied.⁹ It was held that the issuance of the writ was proper although the original authority under which the district was created had expired.¹⁰

Statutory Provisions: Waiver. Defendant twice stipulated that the plaintiff might have additional time within which to file her main brief on appeal. Eighty days after the transcript was filed, the defendant moved to dismiss the appeal for the failure of the plaintiff appellant to pay the costs assessed against her in the lower court as provided by statute.¹¹ Under these circumstances the defendant had waived his right to insist that the appeal should be dismissed because of the failure of the appellant to comply strictly with the statutory provisions.¹²

Summary Judgment. An order granting a motion for summary judgment upon the issue of liability alone, leaving the issue of damages to be determined at trial,¹³ is interlocutory and may not be the basis for an appeal.¹⁴

Tolling of Time Limitations. A petition for a rehearing in equity, if timely filed,¹⁵ will toll the running of the period in which an appeal may be taken.¹⁶

Writ of Prohibition. A defendant who pleads to the merits and participates in the trial of an action after the court overrules an objection to its jurisdiction over his person, does not thereby waive such objection, and may challenge the ruling on appeal.¹⁷ A writ of prohibition, therefore, may not be used in order to challenge the adverse ruling upon an objection to lack of personal jurisdiction where jurisdiction of the subject matter does exist.¹⁸

ATTORNEY AND CLIENT. Arbitration of Fees. Where an attorney and his clients contracted to submit any dispute as to fees to another attorney, such other attorney's determination of the fee was binding upon the clients, since he was familiar with the services performed, knew the parties, and was competent to determine a fair fee.¹⁹

Recovery of Fees: Collusive settlement. A motion by plaintiff's attorneys to continue an action in the name of their client for the purpose of

9. FLA. STAT. § 298.56 (1955).
10. *Millican v. State*, 84 So.2d 712 (Fla. 1956).
11. FLA. STAT. § 59.09 (1953).
12. *Berg v. New York Life Ins. Co.*, 81 So.2d 630 (Fla. 1955).
13. FLA. R.Civ.P. 1.36 (c) (1954).
14. *Brannon v. Johnston*, 83 So.2d 779 (Fla. 1955).
15. FLA. R.Civ.P. 3.16 (1954).
16. *Ganzer v. Ganzer*, 84 So.2d 591 (Fla. 1956).
17. FLA. R.Civ.P. 1.11 (b) (1954).
18. *State v. Shields*, 83 So.2d 271 (Fla. 1955).
19. *Causeway Loan Co. v. Bucklew*, 81 So.2d 212 (Fla. 1955).

recovering their fees was properly denied where there was no showing that a settlement entered into by the client was collusive and for the fraudulent purpose of depriving the attorneys of the full amount of a contingent fee.²⁰

Resignation from Bar. An attorney petitioned the Supreme Court to be allowed to resign from the Florida Bar, stating in his petition that there were disciplinary proceedings pending against him. The court held that the petition could be granted where the resignation was unconditional and where the public interest would not be adversely affected.²¹

CIVIL PROCEDURE. Joinder of parties: Principal and surety. Where a bond provides that it is the joint and several obligation of the principal and sureties, an action may be brought against the sureties without joinder of the principals as parties defendant.²²

Joinder of Parties: Supplementary proceedings. An order was entered stating that a conversion of funds into property held by the judgment debtor and his wife as tenants by the entireties was fraudulent as to creditors and that the judgment creditor who had brought the action was entitled to have levy and execution upon the property. The Supreme Court held where the wife had not been made a party at the institution of the proceedings,²³ she could not be deprived of her interest.²⁴

Judgment: Costs. Trial court erred in imposing the costs of a suit on the Comptroller and the Attorney General when the suit revealed no wrongdoing on the part of the defendants and was dismissed.²⁵

Jurisdiction: Federal and state. A subcontractor brought suit against a general contractor and a surety on its payment bond to recover amounts due under the subcontract. The surety bond was posted under the Miller Act²⁶ which vests in the United States District Court exclusive jurisdiction of actions on federal building contractors' bonds. The state court had no jurisdiction over the suit against the surety.²⁷

Pleadings: Summary Judgment. A motion for summary judgment and a motion to strike a pleading as being false should never be granted if there is any substantial evidence to support the pleading and, in ruling upon such motions, all doubts should be resolved against the moving party. It was therefore error to grant motions to strike and for summary judgment where the moving party's affidavit was contradicted to a substantial degree by the adversary's deposition and affidavits.²⁸

20. *Sentco, Inc. v. McCulloch*, 84 So.2d 498 (Fla. 1955).

21. *Application of Harper*, 84 So.2d 700 (Fla. 1956).

22. *Ruth v. United States Fidelity and Guaranty Co.*, 83 So.2d 769 (Fla. 1955).

23. *FLA. STAT.* § 55.52 (1953).

24. *Meyer v. Faust*, 83 So.2d 847 (Fla. 1955).

25. *State v. Colonial Acceptance, Inc.*, 80 So.2d 681 (Fla. 1955).

26. 40 U.S.C. § 270(a).

27. *Pierce Contractors v. Peerless Cas. Co.*, 81 So.2d 747 (Fla. 1955).

28. *Meadows v. Edwards*, 82 So.2d 733 (Fla. 1955).

Res Judicata: Dismissal. The dismissal of an action for failure to prosecute²⁹ is not an adjudication upon the merits of such action and will not bar a subsequent suit based upon the same subject matter.³⁰

Veniremen: Exclusion. A suit arose out of a collision between two motor vehicles. On voir dire, the plaintiff asked a prospective juror whether he had an interest in a named insurance company. The defendant immediately moved for a mistrial. It was reversible error for the trial court to refuse to exclude the veniremen, other than those tentatively chosen and in the jury box, from the courtroom during the argument on the motion for mistrial.³¹

CONSTITUTIONAL LAW. *Apportionment Bills: Submission to Governor.* Bills for the apportionment of representatives in the Senate and House of Representatives which are enacted pursuant to the constitutional provisions³² on such subjects, do not, ipso facto, become laws when passed by the legislature but should be submitted to the Governor for his consideration and his approval or rejection as contemplated by the constitutional provision³³ pertaining to the Governor's veto power and to passage over the Governor's veto or without his signature.³⁴

Appointing Power of Governor: Judges. Although a circuit judge had disappeared from his home and office under circumstances suggesting foul play, the Governor had no power to declare the office vacant or to increase the number of circuit judges by appointing someone to serve in the missing judge's stead.³⁵

Due Process: Hearing. The defendant telephone company was notified that the telephone facilities of the plaintiff hotel corporation were being used in violation of the gambling laws.³⁶ The telephone company notified the plaintiff that it intended to discontinue service. Suit was brought by the hotel to enjoin the removal of its telephone facilities and also to prevent revocation of its license,³⁷ alleging that the statutes in question violated due process in that they did not provide for a hearing prior to the cancellation of service. It was held that an opportunity to be heard could be afforded through a suit to enjoin the enforcement of the statutes and that the requirements of due process were thus fulfilled.³⁸

Police power: Municipal corporation. A municipal ordinance regulating the size and locations of signs displayed by gasoline filling stations

29. FLA. STAT. § 49.19 (1953).

30. *Zukor v. Hill*, 84 So.2d 554 (Fla. 1956).

31. *Blanton v. Butler*, 81 So.2d 745 (Fla. 1955).

32. FLA. CONST. ART. VII § 3.

33. FLA. CONST. ART. III § 28.

34. *In Re Advisory Opinion to the Governor*, 81 So.2d 782 (Fla. 1955).

35. *In Re Advisory Opinion to the Governor*, 81 So.2d 778 (Fla. 1955).

36. FLA. STAT. § 365.01 (1953).

37. FLA. STAT. § 561.291 (1953).

38. *Southern B.T. & T. Co. v. Nineteen Hundred One C. Corp.*, 83 So.2d 865 (Fla. 1955).

to advertise the price of their products and services was not justified as an exercise of the police power and was therefore unconstitutional.³⁹

Self-incrimination: Due process. The disbarment of an attorney based solely upon his invoking the privilege against self-incrimination in refusing to answer questions concerning his alleged communist activities is a denial of due process.⁴⁰

CONTRACTS. Brokers: Procuring cause of sale. Pursuant to ordinary listing contract, plaintiff real estate broker proposed the sale of defendants' land to the County Board of Public Instruction. A counter-proposal of the Board was rejected by the defendants and plaintiff was told to discontinue negotiations. Approximately two months later, the defendants sold to the Board under the threat that the land would be condemned by it if not sold. The broker was held not to be the procuring cause of the sale and therefore, not entitled to a commission.⁴¹

Brokers' commissions: Condition precedent. An agreement between a prospective lessee and lessor provided for the return of an earnest money deposit and the extinguishment of all obligations under the agreement if certain conditions were not fulfilled. It was also provided that the brokers who procured the prospective lessee were not entitled to a commission until "consummation" of the agreement. Under these provisions the brokers could not recover a commission where, due to the non-performance of the specified conditions, no lease was entered into.⁴²

Consideration: Partial Failure. Plaintiffs contracted to build an ice plant for the defendants which would be capable of producing six tons of ice daily, but which, when completed, produced only half that amount. In a suit to foreclose a mortgage given as security for the payment of the contract price, it was held that a decree of foreclosure should be entered for an amount based upon the *quantum meruit* valuation of the plant.⁴³

Offer: Communication. The plaintiff was not entitled to a reward offered by defendant for information leading to the conviction of the murderer of defendant's wife where such information was delivered to the authorities prior to the making of the offer.⁴⁴

Substantial performance. Defendant had contracted to do certain dredging and filling on waterfront property owned by the plaintiffs. Defendant did not bring the fill up to the elevation specified in the contract but it appeared that part of this deficiency was due to failure on the part of the plaintiffs to comply strictly with the terms of the contract. It was held that the rule of substantial performance should be applied and the

39. *Town of Miami Springs v. Scoville*, 81 So.2d 188 (Fla. 1955).

40. *Sheiner v. State*, 82 So.2d 657 (Fla. 1955).

41. *Darracott v. Hemphill*, 82 So.2d 719 (Fla. 1955).

42. *Kay v. Sperling*, 83 So.2d 881 (Fla. 1955).

43. *Johnson v. Dichiaro*, 84 So.2d 537 (Fla. 1956).

44. *Sumerel v. Pinder*, 83 So.2d 692 (Fla. 1955).

defendant be allowed to recover the amount of the contract price less the damages incurred by plaintiffs.⁴⁵

Usury: Agent's commission. Where a mortgage broker is employed as the agent of the lender, the amount of the commission exacted by the broker from the borrower will be included in determining whether or not the loan is usurious.⁴⁶

CORPORATIONS. Receivership: Transfer of debts. A plaintiff who bases his claim to corporate assets on his stock ownership, and who has accepted the conveyance authorized by the court in a receivership proceeding because of his stock ownership, takes subject to the corporate debts but should be given an opportunity to be heard as to the validity and amount of such debts.⁴⁷

Stockholders: Personal liability. Supplementary proceedings⁴⁸ were instituted against the stockholders of the insolvent corporate debtor. The Supreme Court held that the issuance of a rule to show cause why the judgment should not be satisfied out of the individual assets of the stockholders was properly refused in the absence of any showing that the stockholders held corporation assets or that they organized or conducted the corporation for a fraudulent purpose.⁴⁹

Transfer of Assets: Corporate debts. Plaintiff bought up the mortgages upon the corporate assets of the defendant corporations, then bought the stock of the corporations, and then, by voting the stock, transferred the assets to himself as an individual. The Supreme Court held that he took subject to corporate debts.⁵⁰

CRIMINAL LAW. Fraud: Issuance of worthless check. In a prosecution for the issuance of a worthless check,⁵¹ it was only necessary that the state prove the issuance of the check and its deposit and return marked "insufficient funds." The applicable criminal statute⁵² provides that proof of the above constitutes prima facie evidence that the instrument was issued with knowledge that there were insufficient funds out of which payment could be made.⁵³

Larceny. According to the construction given by the Supreme Court to a penal statute,⁵⁴ a salesman's copy of a contract is property and can be the subject of larceny.⁵⁵

45. *Poranski v. Millings*, 82 So.2d 675 (Fla. 1955).

46. *Speier v. Monnah Park Block Company*, 84 So.2d 697 (Fla. 1955).

47. *Scheiner v. Adamco, Inc.*, 81 So.2d 205 (Fla. 1955).

48. FLA. STAT. § 55.52 (1953).

49. *Advertects, Inc. v. Sawyer Industries*, 84 So.2d 21 (Fla. 1955).

50. *Scheiner v. Adamco, Inc.*, 81 So.2d 205 (Fla. 1955).

51. FLA. STAT. § 832.05 (2) (1955).

52. FLA. STAT. § 832.05 (5) (1955).

53. *Shargaa v. State*, 84 So.2d 42 (Fla. 1955).

54. FLA. STAT. § 811.021 (1953).

55. *Biber v. Miami*, 82 So.2d 747 (Fla. 1955).

Lesser included offenses. The possession of lottery tickets and the selling of chances in a lottery are lesser included offenses respectively of the felonies of promoting a lottery by possessing tickets and of having an interest in a lottery.⁵⁶

Procedure: Argument. Refusal of a trial court to permit a defendant who had offered no testimony on his behalf except his own to make the opening and closing arguments to the jury constituted reversible error.⁵⁷

Photographs offered into evidence by a defendant constitute "testimony" within the meaning of a statute giving a defendant who offers no testimony in his behalf except his own, the right to the opening and the concluding arguments.⁵⁸ A defendant, by introducing such evidence, forfeits the right given by the statute.⁵⁹

Procedure: Double jeopardy. The defendant was charged with stealing a cow. The state's evidence disclosed that it was a bull that had been stolen, not a cow as charged. The defendant's motion for directed verdict based on a material variance between allegations and the proof was granted. Subsequently a second information charging larceny of a bull was filed. The plea of former jeopardy was not available to the defendant in the subsequent prosecution for larceny of a bull since this was not the same offense as that alleged in the first information.⁶⁰

Conspiracy to violate a criminal statute and violation of the statute itself are separate and distinct crimes. A conviction for the commission of one will not bar a prosecution and conviction for commission of the other.⁶¹

Procedure: Judgment. A defendant may not be adjudged guilty of a different or greater offense than that for which he is convicted, and therefore a judgment of conviction for the crime of burglary had to be set aside where the jury found the defendant guilty of breaking and entering with intent to commit a misdemeanor.⁶²

Procedure: Indictment and information. An information charging conspiracy to violate the statute⁶³ prohibiting dissemination of racing data which did not allege the place of the crime, what the conspiracy consisted of, what race track was involved, what races were involved, or what days the races were to be run, failed to state any offense against the laws of Florida and was void.⁶⁴

56. *Nelson v. State*, 83 So.2d 687 (Fla. 1955).

57. *Green v. State*, 80 So.2d 676 (Fla. 1955).

58. FLA. STAT. § 918.09 (1955).

59. *Kennedy v. State*, 83 So.2d 4 (Fla. 1955).

60. *State v. Bentley*, 81 So.2d 750 (Fla. 1955).

61. *Blackburn v. State*, 83 So.2d 694 (Fla. 1955).

62. *Walden v. State*, 83 So.2d 111 (Fla. 1955).

63. FLA. STAT. § 550.35 (1955). ----

64. *State v. Whisnant*, 80 So.2d 611 (Fla. 1955).

Procedure: Sufficiency of warrant. A warrant describing premises to be searched as being located in a certain dwelling on a certain street in Pensacola, Florida, was not insufficient because the premises were in fact located outside the city limits of Pensacola, since there was only one street such as that designated in the warrant and there was no evidence that the officers had difficulty in locating the address described in the warrant.⁶⁵

Procedure: Withdrawal of plea. An order refusing to grant a motion to withdraw a plea of guilty and to substitute one of not guilty will not be upset upon appeal in the absence of a showing that such refusal was an abuse of discretion on the part of the trial court.⁶⁶

Search and Seizure: Consent. In a prosecution for illegally transporting alcoholic beverages, the search of a truck without a warrant but with the consent of the driver was not an unreasonable search despite the fact that the truck was unlawfully stopped.⁶⁷

Search and Seizure: Probable cause. Affiant listened on an extension telephone while a confidential informant called the number listed under accused's name and purchased from the person who answered an interest in a lottery. This was sufficient to show probable cause or reasonable belief or trustworthy information that a lottery was being conducted on the accused's premises, and to justify the issuance of a search warrant.⁶⁸

Search and Seizure: Without a warrant. Sheriff, who illegally stopped defendant's truck and found liquor dripping therefrom, was not entitled to search the truck without a warrant, since one cannot discern the probable absence of a revenue stamp by smelling and tasting the whiskey.⁶⁹

Sentence: Credit for time served. Defendant was convicted upon retrial for the same crime. It was error for the trial court to sentence him without giving full credit for the time he served under the void sentence along with the "gain time" he had earned.⁷⁰

Sentence: First offense. Petitioner was found guilty of the unlawful possession of marijuana and sentenced to eleven years imprisonment. The maximum sentence for first offenders under this criminal statute was five years. Since there was no suggestion in the record that this was not a first offense, the sentence was void.⁷¹

DOMESTIC RELATIONS. *Child custody order: Notice.* An order granting to the father custody of minor children, previously in the custody of the

65. *Bonner v. State*, 80 So.2d 683 (Fla. 1955).

66. *Adams v. State*, 83 So.2d 273 (Fla. 1955).

67. *James v. State*, 80 So.2d 699 (Fla. 1955).

68. *Perez v. State*, 81 So.2d 201 (Fla. 1955).

69. *Byrd v. State*, 80 So.2d 694 (Fla. 1955).

70. *Tilghman v. Mayo*, 82 So.2d 136 (Fla. 1955).

71. *Bascelio v. Mayo*, 81 So.2d 649 (Fla. 1955).

mother pursuant to a divorce decree, was erroneous where there was no notice, or excuse for failure to give notice, to the mother.⁷²

Divorce: Constructive service. The test used in divorce actions to determine whether constructive service may be employed is whether the complainant reasonably utilized knowledge at his command, made diligent inquiry, and exerted an honest effort appropriate to the circumstances to acquire the information necessary to enable him to effect personal service, and not whether it was in fact possible to effect personal service.⁷³

Divorce: Modification of alimony award. A divorced husband petitioned for a modification of the prior divorce decree⁷⁴ and was awarded an amended decree relieving him of the burden of paying alimony "until the further order of [the] courts." It was held that the amended decree, although *res judicata* as to the matters settled therein, did not bar the wife from subsequently petitioning the court for a reinstatement of alimony.⁷⁵

Divorce: Ne exeat bond. In a divorce proceeding the surety upon a husband's *ne exeat* bond surrendered him in open court and moved for a discharge of the bond. It was error for the chancellor to deduct sums from the bond for the payment of costs and attorneys' fees when it was not shown that the husband had passed from the jurisdiction of the court.⁷⁶

Divorce decree: Recordation. Although, by statute,⁷⁷ no proceedings may be had upon an equity decree until it is recorded, the mere lack of recordation does not impair the efficacy of a decree otherwise valid. Thus, a divorce decree signed by the chancellor shortly before the death of one of the parties, but recorded afterwards, was effective to dissolve the marriage.⁷⁸

Separate maintenance: Subsequent divorce. An Alabama divorce decree awarded a husband upon service by publication was held not to affect the alimony provisions of a prior separate maintenance decree obtained by the wife in Florida.⁷⁹

Support payments: Default. A Florida rule⁸⁰ provides for the enforcement of final decrees by authorizing a writ of attachment ordering the delinquent party to be taken into custody, to be issued upon an affidavit filed by the plaintiff that specific acts ordered by the decree have not been complied with. The rule is not applicable to default on payments ordered by a divorce decree for the support of children.⁸¹

72. *Abney v. Abney*, 84 So.2d 905 (Fla. 1956).

73. *Grammer v. Grammer*, 80 So.2d 457 (Fla. 1955).

74. FLA. STAT. § 65.15 (1955).

75. *James v. James*, 84 So.2d 914 (Fla. 1956).

76. *Aiken v. Aiken*, 81 So.2d 757 (Fla. 1955).

77. FLA. STAT. § 62.16 (1953).

78. *Berkenfield v. Jacobs*, 83 So.2d 265 (Fla. 1955).

79. *Sorrells v. Sorrells*, 82 So.2d 684 (Fla. 1955).

80. FLA. R. CIV. P. 3.15 (1954).

81. *Atkinson v. Atkinson*, 80 So.2d 464 (Fla. 1955).

Equity. Mistake: Improvements to land. Plaintiff, intending to build a dwelling on his lot, mistakenly built upon an adjacent lot owned by the defendant. The two lots were substantially the same and the chancellor decreed that the parties exchange deeds to the prospective lots and that plaintiff pay to defendant \$150 and costs. The decree was affirmed.⁸²

Mutual mistake: Land. Plaintiff and defendant each purchased separate tracts of land from the same owner, and owing to a mistake of fact under which all the parties labored, a house which plaintiff believed was acquired in his purchase was actually situated on the land of the defendant. It was held that the plaintiff should be given a reasonable length of time in which to remove the building upon the condition that he compensate the defendant for any damage to the freehold resulting from the removal.⁸³

Unfair business practices. It is a well settled principle of equity jurisprudence that an employee cannot lawfully use for his own advantage and to the harm of his employer confidential information which was gained in the course of employment. The state court, sitting in chancery, therefore had jurisdiction to entertain a suit to enjoin former employees from manufacturing, imitating, or selling the plaintiff's product, notwithstanding the fact that the plaintiffs could have brought suit in federal court for infringement of their patent rights.⁸⁴

Unfair competition: Trade names. Plaintiff sold bread under the unregistered trade name of "Dandy" and brought suit to enjoin defendant from marketing bread under the name of "Dandee." It was held that the injunction was properly refused where the evidence did not indicate that there existed in the minds of the public any confusion of the two products.⁸⁵

Evidence. Hearsay: Admission. In a suit to recover for personal injuries sustained in an automobile accident, it was reversible error to admit evidence that the defendant's employee had pleaded guilty to a reckless driving charge and had admitted responsibility for the accident.⁸⁶

Illegally obtained evidence: Injunction. An action was brought to enjoin state officers from testifying against plaintiffs in the United States District Court and to restrain the sheriff from turning over to the federal authorities contraband evidence secured from a search and seizure on plaintiff's premises with a search warrant that was later quashed. The plaintiffs were not entitled to such an injunction in the absence of a showing of unusual circumstances or irreparable loss or damage to plaintiffs' property or other rights necessary to justify such intervention by the state court.⁸⁷

82. *Voss v. Forgue*, 84 So.2d 563 (Fla. 1956).

83. *Hedges v. Lysek*, 84 So.2d 28 (Fla. 1955).

84. *Bert Lane Company v. International Industries*, 84 So.2d 5 (Fla. 1955).

85. *Webb's City, Inc., v. Bell Bakeries*, 226 F.2d 700 (5th Cir. 1955).

86. *Kaplan v. Roth*, 84 So.2d 559 (Fla. 1956).

87. *Weiner v. Kelly*, 82 So.2d 155 (Fla. 1955).

• *Subsequent repairs.* In an action to recover for personal injuries sustained as the result of a fall brought about by an alleged defect in defendant city's sidewalk, evidence that the city had subsequently repaired the defect was inadmissible, although the defendant's counsel had remarked to the jury in his opening statement that the condition constituting the alleged defect never existed.⁸⁸

FLORIDA TAXATION. Homestead exemption. Plaintiff husband and wife, owners of a home, quit same because the husband was recalled to active duty in the armed forces of the United States. Since the plaintiffs continued in good faith to consider the vacated premises as their home to the exclusion of all other places, they were entitled to the homestead tax exemption thereon.⁸⁹

Improvement Bonds: Airport. Airport improvement bonds which were to be retired from proceeds obtained from renting concessions at the airport, from occupational and beverage licenses, and from the county's share of state race track receipts were valid. An approving vote of the freeholders was not required as a condition precedent to the issuance of the bonds since they were payable from sources other than *ad valorem* taxes.⁹⁰

Improvement bonds: Ad valorem assessments. A proposed improvement district bond issue provided that the bonds would be liquidated by specially assessing all real property within the district and that such assessments would be based upon the assessed valuation of such property. It was held that since there was no showing that the assessments would bear any relationship to the benefits that would accrue to the property through the improvements, the bond issue in reality provided for an *ad valorem* tax against homesteads⁹¹ and was therefore, invalid.⁹²

Licenses: Alcoholic Beverages. A statute⁹³ provides that the population limitation regarding the issuance of beverage licenses does not apply to restaurants occupying an area greater than four thousand square feet. The external measurements of the building are to be used in computing area under this statute.⁹⁴

Licenses: Nurses. Nurses are not included within the scope of a statute⁹⁵ imposing a license tax upon persons "engaged in the practice of a profession."⁹⁶

88. *City of Miami Beach v. Wolfe*, 83 So.2d 774 (Fla. 1955).

89. *L'Engle v. Forbes*, 81 So.2d 214 (Fla. 1955).

90. *State v. Monroe County*, 81 So.2d 522 (Fla. 1955).

91. FLA. CONST. Art. X § 7.

92. *Fisher v. Board of County Comm'rs of Dade County*, 84 So.2d 572 (Fla. 1956).

93. FLA. STAT. § 561.20 (1,2) (1953).

94. *McKinney v. State*, 83 So.2d 875 (Fla. 1955).

95. FLA. STAT. § 205.52 (1953).

96. *Lambert v. Mullan*, 83 So.2d 601 (Fla. 1955).

Municipal Assessments: Description of Property. A statute⁹⁷ charges all owners of property with notice that taxes thereon are due annually and further charges the owners with the duty of ascertaining the amount of such tax. Therefore, a suit may not be maintained to invalidate certain municipal assessments on the ground that the description of the property on the tax rolls was so fatally defective that the taxpayer could not be held to have had knowledge of the assessments.⁹⁸

INSURANCE. Agent's commissions. In the absence of an express provision to the contrary, an insurance agent does not have any right to commissions upon premiums paid for policy renewals not secured by him.⁹⁹

Cancellation: Notice. Where an insurance policy provides that the insurer may cancel the policy by the mailing of a notice of cancellation, convincing evidence that the notice was mailed may not be rebutted by evidence that the insured did not receive same.¹⁰⁰

Claims: Attorney's fees. Two persons entered claims against the defendant insurance company for the proceeds under a life insurance policy. It was held that the trial court committed error in assessing attorney's fees¹⁰¹ against the company in favor of the successful claimant where there was no "wrongful" refusal on the part of the insurer to pay the proceeds of the policy.¹⁰²

Liability policies: Obligation to defend. Under a property liability insurance policy, the insurer was not obligated to defend and pay the costs of an equity action in which a mandatory injunction was sought. The court held that, under the terms of the policy, the insurer was obligated to defend only damage suits brought against the insured.¹⁰³

LABOR LAW. Fair Labor Standards Act: Applicability. Defendant, a bakery with an annual business exceeding one million dollars, furnished \$57,500 in baked goods to a catering company. The caterers used one third of the baked goods purchased from defendant for the preparation of flight meals sold to airlines for use on planes leaving the state. Defendant's employees were engaged in "production of goods for interstate commerce" within the meaning of the Fair Labor Standards Act.¹⁰⁴

Picketing: Appointment of Commissioner to hold election. In a suit to enjoin picketing of plaintiff's hotel on the ground that the picketing

97. FLA. STAT. § 92.21 (1953).

98. *Thompson v. City of Key West*, 82 So.2d 749 (Fla. 1955).

99. *Frank O. Pruitt, Inc. v. Southern Underwriters*, 83 So.2d 115 (Fla. 1955).

100. *Service Fire Insurance Co. of New York v. Markey*, 83 So.2d 855 (Fla. 1955).

101. FLA. STAT. § 625.08 (1953).

102. *Equitable Life Assurance Society v. Nichols*, 84 So.2d 500 (Fla. 1956).

103. *Aetna Casualty and Surety Company v. Hanna*, 224 F.2d 499 (5th Cir. 1955).

104. Fair Labor Standards Act of 1938, 52 STAT. 1060, 29 U.S.C. § 201 (1938); *Mitchell v. Royal Baking Company*, 219 F.2d 532 (5th Cir. 1955).

was for an unlawful purpose, it was improper for the chancellor to enter an order appointing a commissioner to hold a secret ballot among the plaintiff's employees for the purpose of determining how many of them chose the defendant union as their lawful representative.¹⁰⁵

Picketing: Conditional injunction. The lower court entered an order enjoining picketing and providing for an election among the employees to determine their bargaining agent. The employer applied for a stay of the latter part of the order and the lower court granted a stay of the entire order. It was error for the lower court to impose the requirement that the injunctive portion of the decree be also cancelled as a condition to granting supersedeas as to the portion of the order appealed from.¹⁰⁶

Picketing: Unlawful purpose. Picketing for the purpose of forcing an employer to negotiate with a union is unlawful where the union has not been chosen by at least some of the employees as their bargaining agent, and where an opportunity has not been afforded the employer to engage in negotiations upon the subject matter of the dispute.¹⁰⁷

LANDLORD AND TENANT. Failure to repair premises: Damages. The lessors of a hotel breached an agreement to maintain the roof and walls of the building in such condition as to prevent the entry of water into the building. The lessee was able to recover as damages the difference between what the rooms could have been rented for had the lessors not breached, and the amount for which the rooms had actually been rented.¹⁰⁸

Mechanics' Liens: Lessor's interest. Where a lessee procures certain alterations or improvements to be made on the leased premises, the mechanics' lien which is created does not extend to the lessor's interest unless the lease or some other agreement requires the lessee to have such work done.¹⁰⁹

Wrongful eviction: Damages. A lessee who has an established business disrupted by his wrongful eviction may recover lost profits where such losses may be determined with a reasonable degree of certainty.¹¹⁰

MUNICIPAL CORPORATIONS. Bonds: Offstreet parking facilities. Suit was brought to validate revenue bonds to be issued by a city to finance the acquisition and improvement of off-street parking facilities. It was determined that the city had the power to pledge the revenue to be realized from existing parking facilities to pay the principal and interest of the bonds, without having to submit the issue to the freeholders.¹¹¹

105. *Thomas Jefferson, Inc. v. Hotel Employees Union*, 84 So.2d 583 (Fla. 1956).

106. *Thomas Jefferson, Inc. v. Hotel Employees Union*, 81 So.2d 731 (Fla. 1955).

107. *Boca Raton Club v. Hotel Employees Union*, 83 So.2d 11 (Fla. 1955).

108. *Rosen v. Needleman*, 83 So.2d 113 (Fla. 1955).

109. *Brenner v. Smullian*, 84 So.2d 44 (Fla. 1955).

110. *Young v. Cobbs*, 83 So.2d 417 (Fla. 1955).

111. *Lynn v. City of Fort Lauderdale*, 81 So.2d 511 (Fla. 1955).

Contracts: Ratification. An agreement between a city and the state board of control to furnish water to the University of Florida without charge was not void and was ratified by both the city and the state by furnishing free water for 45 years.¹¹²

Liability: Negligence. The plaintiff's residence was adjacent to the defendant city's ball park where a major league baseball team was permitted to conduct its practice sessions. Each day, youthful spectators would organize themselves into gangs for the purpose of chasing and retrieving baseballs hit outside of the park. The plaintiff was injured by one of these groups of baseball retrievers whose practice it was to knock down any person interfering with their objective of recovering the baseballs. It was held that the city would be liable if it were shown that it knew or should have known of this condition and that it failed to take the proper precautions to prevent same.¹¹³

Ordinances: Charter requirements. The ordinances of a municipal corporation are of no effect unless the provisions in its charter regarding the passage of ordinances are strictly complied with. Thus, a liquor ordinance was held ineffective where it was not passed by the taking of "yeas and nays and entered upon the journal" as required by the charter.¹¹⁴

Subdivisions: Public Improvements. A city insisted that the owner of a subdivision construct a sewage system beneath the dedicated streets of the city. The city did not reserve the right to use the system or to allow others to do so, and the city neither claimed nor exercised control over the system. The property owner who had installed the system had the exclusive right to use same.¹¹⁵

Tax Liens: Sale. Municipal tax liens may be enforced by the sale of delinquent tax certificates at public auction¹¹⁶ or in the alternative by foreclosure of the certificates.¹¹⁷ Therefore a city board of managers had the authority to pass a resolution preventing the sale of delinquent tax certificates at public auction in order to make it possible to foreclose same.¹¹⁸

PERSONAL PROPERTY. *Chattel Mortgages: Lienor's rights against third party.* Plaintiff held a retain title note against an automobile which was damaged in a collision with a truck owned by defendant's insured. Defendant was notified of the plaintiff's interest in the vehicle, but nevertheless, it made settlement with the conditional vendee. This settlement

112. *City of Gainesville v. Board of Control*, 81 So.2d 514 (Fla. 1955).

113. *Woodford v. City of St. Petersburg*, 84 So.2d 25 (Fla. 1955).

114. *Nelson v. State*, 83 So.2d 696 (Fla. 1955).

115. *Newport Manor v. Carmen Land Co.*, 82 So.2d 127 (Fla. 1955).

116. FLA. STAT. §§ 193.01, 194.01 (1953); Spec. Laws of Fla., c. 15401, § 101 (1931).

117. FLA. STAT. § 173.01 (1953).

118. *City of Ormond Beach v. Cook*, 81 So.2d 481 (Fla. 1955).

was held to be a bar to an action by the conditional vendor where it had notice that defendant might effect a settlement with the vendee and where it failed to take appropriate action to protect its interest.¹¹⁹

Chattel Mortgages: Subsequent purchaser. His failure to comply with a statute¹²⁰ requiring purchasers of out-of-state cars to make inquiries to discover whether any liens have been recorded against the car deprived the purchaser of the right to plead that he was an innocent purchaser for value, without notice of the recorded mortgage, even though both the title certificate and the mortgage bore an incorrect motor number.¹²¹

REAL PROPERTY. Deeds: Construction. Where, in a deed, there is an apparent inconsistency between the granting and the habendum clauses, the entire instrument will be considered in order to determine the true intention of the grantor. Thus, the habendum of a deed was held to have indicated that the true intention of the grantor was to convey only a life estate although the granting clause contained the customary words of inheritance.¹²²

Eminent Domain. Valuation of land. The amount of compensation to be awarded for land taken in an eminent domain proceeding is the value of the land at the time of the lawful appropriation. Evidence as to what it would be worth if certain improvements were made on it is inadmissible.¹²³

Foreclosure: Breach of covenant to repair. A mortgagee could not foreclose for breach of a covenant to keep the building on the mortgaged premises in repair where it was not shown that his security had been impaired.¹²⁴

Foreclosure: Parties. Suit was brought to foreclose a mortgage on property, the title to which was in the wife, given as security for a note executed by both husband and wife. The complaint was amended to base the action upon a note which husband alone had subsequently executed for the amount then due on the original note. The Supreme Court held that failure to produce the original note or to explain the failure to do so precluded the entry of a decree of foreclosure against the wife.¹²⁵

Highways: Obstruction. A non-resident of a county brought suit to enjoin the obstruction of a public road within the county. The plaintiff owned no property along said road and there was an equally accessible road available for his use. The Supreme Court held that he had no right to maintain the suit.¹²⁶

119. *Lake City Auto Finance Co. v. Waldron*, 83 So.2d 877 (Fla. 1955).

120. FLA. STAT. § 319.27 (1953).

121. *Clinger v. Reliable Discount Co.*, 80 So.2d 606 (Fla. 1955).

122. *Bronstein v. Bronstein*, 83 So.2d 699 (Fla. 1955).

123. *Yoder v. Sarasota County*, 81 So.2d 219 (Fla. 1955).

124. *St. Martin v. McGee*, 82 So.2d 736 (Fla. 1955).

125. *Downing v. First National Bank*, 81 So.2d 486 (Fla. 1955).

126. *O'Dell v. Walsh*, 81 So.2d 554 (Fla. 1955).

Improvements to another's land: Measure of compensation. The measure of compensation for improvements to the land of another made in good faith by one in possession under color of title was the amount by which such improvements had enhanced the value of the owner's estate, less the reasonable rental value of the land for the period of possession by the improvement maker.¹²⁷

Judgments: Statutory requirements. A judgment which did not describe by metes and bounds, or otherwise locate the property which it sought to return to plaintiff did not comply with the requirement of the statute¹²⁸ governing judgments in such actions and therefore was reversed.¹²⁹

Liens: Materialman. Generally under an ordinary contract of sale which may permit construction by the purchaser, the lien of a materialman in privity only with the vendee does not attach to the vendor's interest. However, where the previous owner of property required that the purchaser construct cabins upon the property as a condition of sale, the previous owner's interest in the property was subject to the liens incurred in the construction of the cabins.¹³⁰

A materialman could not claim a lien against the defendants' real estate where the defendants had relied upon the materialman's receipted bill and release of lien which were executed by him when he received payment by means of the contractor's worthless check.¹³¹

Tenancy in common: Contribution. Where one co-tenant of real estate paid the mortgage thereon which was the obligation of both and neither had a prior duty of performance, the payor-co-tenant could recover in equity but was limited to his right of contribution.¹³²

TORTS. Child's wrongdoing: Parental liability. A complaint against parents for injuries sustained by reason of their child's tort in slamming a door against a hotel employee's hand and severing a finger did not state a cause of action against the parents because it failed to allege that the child was in the habit of slamming doors in similar situations.¹³³

Damages: Pain and suffering. The application of the "present worth" rule to future pain and suffering is incorrect. No standard exists by which to measure damages for pain and suffering except the enlightened conscience of impartial jurors.¹³⁴

Invasion of privacy: News media. A telecast was made of a "canned" film which depicted a raid upon an alleged gambling establishment. The

127. *Arey v. Williams*, 81 So.2d 525 (Fla. 1955).

128. FLA. STAT. § 70.05 (1955).

129. *Florida Coca-Cola Bottling Co. v. Robbins*, 81 So.2d 193 (Fla. 1955).

130. *Tremont Co. v. Paasche*, 81 So.2d 489 (Fla. 1955).

131. *Leyman v. Snyder*, 84 So.2d 312 (Fla. 1955).

132. *Meckler v. Weiss*, 80 So.2d 608 (Fla. 1955).

133. *Gissen v. Goodwill*, 80 So.2d 701 (Fla. 1955).

134. *Braddock v. Seaboard Air Line R.R.*, 80 So.2d 662 (Fla. 1955).

appearance in the film of the plaintiff, an innocent bystander, was not an unreasonable or unwarranted invasion of his privacy.¹³⁵

Libel. A magazine distributing company was not liable for an alleged defamatory article appearing in a magazine which it distributed where it had no knowledge that the magazine contained the libelous matter.¹⁴⁶

Malicious prosecution. Plaintiff's judgment in a malicious prosecution suit was affirmed where successive civil actions based upon the same cause of action were filed against the plaintiff by the defendant after a previous judgment, which should have settled the controversy, had been rendered against the defendant.¹³⁷

Negligence: Attractive nuisance. Plaintiff, a two and a half year old child, was injured by an artificial condition existing upon the land of another and created by defendant contractor. It was held that the child had a cause of action against the contractor based upon the attractive nuisance doctrine.¹³⁸

Negligence: Contributory fault. Plaintiff brought action against city for the death of her husband. Deceased, a carpenter, was walking along the ridge of a pitched roof, which he was measuring with a steel tape held by a spool, and was electrocuted by contact with defendant's uninsulated, high voltage electric wires. Decedent was not as a matter of law guilty of contributory negligence and the issue was properly submitted for determination by the jury.¹³⁹

Florida law requires that a driver of a motor vehicle operate it so that he can control or stop it within the range of his vision. The plaintiff, who was injured when he collided with the defendant's negligently parked truck, was guilty, therefore, of contributory negligence as a matter of law where his headlights should have revealed the truck¹⁴⁰ so that, if he had been attentive, he could have safely avoided it.¹⁴¹

Decedent was killed while attempting to pass defendant's truck, which was parked in a traffic lane at night without flares or warning devices. Decedent was not guilty of contributory negligence.¹⁴²

A driver, proceeding on a through street and observing the lights of a car approaching a stop sign at the entrance into the street on which he was traveling, was not required to act on the presumption that the other driver would not stop to let the car on his right proceed.¹⁴³

135. *Jacova v. So. Radio and Television Co.*, 83 So.2d 34 (Fla. 1955).

136. *Sexton v. American News Co.*, 133 F. Supp. 591 (N.D. Fla. 1955).

137. *Trueman Fertilizer Company v. Stein*, 84 So.2d 570 (Fla. 1956).

138. *Cockerham v. R. E. Vaughan, Inc.*, 82 So.2d 890 (Fla. 1955).

139. *City of Williston v. Cribbs*, 82 So.2d 150 (Fla. 1955).

140. FLA. STAT. § 317.58 (1955).

141. *Geigy Chemical Corp. v. Allen*, 224 F.2d 110 (5th Cir. 1955).

142. *Townsend Sash Door and Lumber Co. v. Silas*, 82 So.2d 159 (Fla. 1955).

143. *Yappa v. Bennett*, 80 So.2d 600 (Fla. 1955).

Negligence: Guest Statute. An airplane mechanic was injured while riding on a fuel truck, according to the customary practice, for the purpose of directing the placement of trucks fueling airplanes. The Supreme Court held that the mechanic rode on the truck for the mutual advantage of himself and the driver and that therefore the guest statute¹⁴⁴ did not apply.¹⁴⁵

Negligence: Invitees. Defendant requested plaintiff to keep watch over a workman as he inspected bars recently installed in defendant's home. Defendant did not inform plaintiff of a difference in the floor levels of two of the rooms in the house and plaintiff fell and was injured. Defendant's failure to inform plaintiff of the difference in elevation of the two rooms did not constitute negligence.¹⁴⁶

Negligence: Physicians and surgeons. A patient brought suit against his physician for alleged malpractice in the treatment of cancer. The treatment failed to alleviate plaintiff's condition, and physician discharged him without arranging for or suggesting other medical attention or different treatment. The physician breached his duty to the patient by failing to inform him at the earliest possible time that the prescribed treatment was ineffective and the only hope of recovery lay with other types of treatment.¹⁴⁷

Defendant physicians applied steaming hot towels to the arm of plaintiff's newly born child in order to revive her circulation in that limb. The heat pack treatment caused the arm and hand to be burned to such an extent that the child lost her fingers and thumb. In affirming a judgment for the plaintiff the court held that the question involved was not whether the defendants used the proper treatment under the circumstances, but rather whether the treatment used was applied in a non-negligent manner.¹⁴⁸

Negligence: Standard of care. Plaintiff was injured when she walked across a grass strip of parkway inside a curb and tripped over a water meter box which protruded two inches above the ground. The Supreme Court held that neither the city nor the water company was required to exercise as great a degree of care for the safety of pedestrians in parkways as it would have had to exercise for their safety on the streets and sidewalks.¹⁴⁹

Negligence: Violation of ordinance. The violation of a municipal ordinance relating to passing at intersections, like violations of other traffic laws or regulations, is only prima facie evidence of negligence and may be overcome by proof to the contrary.¹⁵⁰

144. FLA. STAT. § 320.59 (1955).

145. *Sproule v. Nelson*, 81 So.2d 478 (Fla. 1955).

146. *Hoag v. Moeller*, 82 So.2d 138 (Fla. 1955).

147. *Baldor v. Rogers*, 81 So.2d 658 (Fla. 1955).

148. *Montgomery v. Stary*, 84 So.2d 34 (Fla. 1955).

149. *Dramstadt v. West Palm Beach*, 81 So.2d 484 (Fla. 1955).

150. *Gudath v. Culp Lumber Co.*, 81 So.2d 742 (Fla. 1955).

Strict Liability: Respondeat superior. Defendant corporation was not liable for injuries inflicted upon a business invitee by a vicious animal which an employee kept on defendant's premises without its knowledge.¹⁵¹

Wrongful Death: Imputation of negligence. A father may not recover for the death of his minor child¹⁵² where the death was proximately contributed to by the negligent conduct of the mother and where the father should have known of such conduct.¹⁵³

Wrongful death: Inability to sue. A wife's legal inability to sue her husband is not a bar to an action under the Wrongful Death Act¹⁵⁴ by the wife's surviving minor children against the estate of her husband, who had murdered her and then committed suicide.¹⁵⁵

Wrongful death: Statute of limitations. Wife brought action against city for the wrongful death of her husband. A statute¹⁵⁶ required that actions against a city for negligence or wrongful injury to person or property must be commenced within 12 months from the time of the injury. This provision does not apply to actions for wrongful death since such actions are neither injuries to person or property but are a distinct right to recovery created by statute.¹⁵⁷

TRUST AND SUCCESSION. *Estates: Creditors' claims.* Executrices who failed to file objections to a creditor's claim against the estate could not thereafter resist the claim on the ground that it was barred by the statute of limitations.¹⁵⁸

Estates: Dower. The decedent had sold his interest in a partnership to his former partners under an agreement that upon his death any indebtedness owned by him to the partnership would be offset against the balance due him from the partners for the sale of his interest. A statute which provided that dower be free from all liability for the decedent's debts¹⁵⁹ entitled the widow to one third of the entire amount due the decedent from his former partners, exclusive of the sum due the partnership.¹⁶⁰

Estates: Time for filing claims. A statute¹⁶¹ specifying the time in which claims against an estate must be filed does not apply to one attempting to enforce a beneficial interest in trust property held by the estate.

151. *Dickson v. Graham-Jones Paper Co.*, 84 So.2d 309 (Fla. 1955).

152. FLA. STAT. § 768.03 (1955).

153. *Klepper v. Breslin*, 83 So.2d 587 (Fla. 1955).

154. FLA. STAT. §§ 768.01, 768.02 (1955).

155. *Shiver v. Sessions*, 80 So.2d 905 (Fla. 1955).

156. FLA. STAT. § 95.24 (1955).

157. FLA. STAT. §§ 768.01, 768.02 (1955); *Parker v. Jacksonville*, 82 So.2d 131 (Fla. 1955).

158. *Coggin v. Shanley*, 81 So.2d 728 (Fla. 1955).

159. FLA. STAT. § 731.34 (1955).

160. *In re Payne's Estate*, 83 So.2d 109 (Fla. 1955).

161. FLA. STAT. § 733.16 (1955).

Thus, a suit by the beneficiary of a resulting trust was not barred, though instituted after the running of the statute.¹⁶²

Wills: Ademption. Subsequent to the execution of his will, the testator entered into a contract to sell the subject matter of a specific devise to the devisees. The devise was thus held to be adeemed and the devisee purchasers were not relieved of their obligation under the contract to pay the balance of the purchase price.¹⁶³

Mutual Wills: Construction. A husband and wife executed a mutual will wherein it was provided that "in the event death do (*sic*) not occur to the both of us simultaneously in a common disaster or in the event one of us should not survive the other for a period of more than one calendar month," the will was to be void. Taken with other provisions of the will, this paragraph was construed to mean that the will would not take effect unless its makers died as the result of a common disaster, either simultaneously or within thirty days of each other. The will was therefore declared void where the husband and wife died within thirty days of each other from natural causes.¹⁶⁴

Wills: Precatory expressions. A provision in a will directing that a particular person act as attorney for the personal representative of the estate is merely precatory in nature. The personal representative may therefore refuse to employ the attorney named in the will and may select another of his own choosing.¹⁶⁵

Wills: Unprovided for contingency. The testator had devised and bequeathed his entire estate to his two stepsons providing that in the event a stepson should predecease him, the children of such stepson would take their deceased father's share. A stepson and his children were killed in an accident prior to the death of the testator. This contingency was not provided for in the will. It was held that the sole remaining beneficiary under the will was not entitled to his deceased brother's share but that such share should pass by intestate succession to the heirs of the testator.¹⁶⁶

WORKMEN'S COMPENSATION. Award: When due. A Florida statute¹⁶⁷ entitles workmen's compensation claimants to an additional twenty percent award where the original award "is not paid within fourteen days after it becomes due." For the purposes of this statute the award becomes due upon the day it is entered.¹⁶⁸

Course of employment: Dual purpose. An employee is entitled to workmen's compensation benefits where he is injured while engaged on

162. *Hodges v. Logan*, 82 So.2d 885 (Fla. 1955).

163. *Eisenschenk v. Fowler*, 82 So.2d 876 (Fla. 1955).

164. *Meszaros v. Holsberry*, 84 So.2d 565 (Fla. 1956).

165. *In re Marks' Estate*, 83 So.2d 853 (Fla. 1955).

166. *In re Eltzeroth's Estate*, 83 So.2d 772 (Fla. 1955).

167. FLA. STAT. § 440.20 (6) (1953).

168. *Rutherford v. Seven-Up Bottling Co.*, 83 So.2d 269 (Fla. 1955).

a mission which serves both a business and a personal purpose, regardless of whether the business purpose is dominant or not.¹⁶⁹

Definition of employment. The plaintiff sold the products of a cutlery company from a counter in defendant's store. The plaintiff was on defendant's payroll, and defendant withheld federal taxes, old age benefits, etc., from her compensation. The Supreme Court held that plaintiff was defendant's employee and that any rights she had against defendant for injuries sustained in the store were limited by the Workmen's Compensation law.¹⁷⁰

Review: Fulfillment of time requirement. A petition for review of an order of a state industrial commission, which had been mailed on the 59th day after the entry of the order but not received by the court within the 60 day statutory period,¹⁷¹ was dismissed.¹⁷²

Review: Statement of facts. An employee appealed from an order denying compensation. The Supreme Court held that where the Deputy Commissioner failed to set forth a proper statement of the facts relied upon to determine the case, as required by statute,¹⁷³ the case must be remanded for compliance with the statutory requirements.¹⁷⁴

Review: Tolling of statutory period. The 60 day period for filing a petition for certiorari to review an order of the Florida Industrial Commission was not tolled by filing a petition for rehearing when there was neither a valid rule nor a statute authorizing the filing of such a petition.¹⁷⁵

169. *Cook v. Highway Cas. Co.*, 82 So.2d 679 (Fla. 1955).

170. *Yovan v. Burdines*, 81 So.2d 555 (Fla. 1955).

171. FLA. SUP. CT. Rule 16 (1) (1955).

172. *Columbia Cas. Co. v. McFee*, 81 So.2d 631 (Fla. 1955).

173. FLA. STAT. § 440.25(3)(c) (1953).

174. *Hardy v. City of Tarpon Springs*, 81 So.2d 503 (Fla. 1955).

175. *Jacksonville Paper Co. v. Nolan*, 80 So.2d 454 (Fla. 1955).

The Synopsis covers cases (excluding memorandum opinions and others not considered of sufficient importance to note) decided by the Florida Supreme Court during the period May 13, 1955 through January 27, 1956, which are to be found in 80 So.2d 368 to 84 So.2d 920. In addition, federal cases interpretive of Florida law, or of general import in Florida, have been included. These were found in 219 F.2d 532 through 228 F.2d (Feb. 1955-Mar. 1956) and 129 F. Supp. 837 through 135 F. Supp. (Mar. 1955-Jan. 1956).

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